



LAWRENCE BERKELEY NATIONAL LABORATORY (LBNL)  
Certificate of Foreign Status for Federal Tax Withholding (LBNL Substitute W-8BEN)

This information is required in accordance with the provisions of the Internal Revenue Code applicable to foreign individuals. LBNL will use this information to determine the appropriate Federal and State tax withholding applicable to any payment(s) you receive. You must complete this form prior to receiving a payment from LBNL. In addition, if there is a change in your immigration status, you must complete a new form. The information requested below is confidential and will be used only to determine your correct tax withholding status. Please read the instructions before completing this form.

If you are an employee and have a Form I-20, DS2019, or Notice of Action, please attach it. If you are an independent contractor, attach a copy of your Form I-94. If you are receiving payments from a source that did not sponsor your J visa, you must attach a copy of your approval notice from the sponsor.

**Do not complete this form if you are a U.S. CITIZEN or LAWFUL PERMANENT RESIDENT of the United States. If you are an employee, your Employment Eligibility Verification, Form I-9, must indicate that you are a U.S. citizen or lawful permanent resident.**

**SECTION A. IDENTIFICATION OF PAYEE**

1. Name (Last, First, Middle)	2. Employee ID. Number	3. Taxpayer ID. Number <input type="checkbox"/> SSN <input type="checkbox"/> ITIN
4. Division	5. Email address	
6. LBNL Status. Check all that apply <input type="checkbox"/> Staff, Post Doc or Student Employee <input type="checkbox"/> Fellowship Recipient <input type="checkbox"/> Royalty <input type="checkbox"/> Independent Contractor <input type="checkbox"/> Working outside the U.S. (If you check this box, proceed to Section H)		
7. Street Address In U.S.	8. Permanent Residence Address	
Street Address Line 2	Street Address Line 2	
City, State, Zip Code	City, Province, Country, Postal Code	

**SECTION B. HEALTH INSURANCE INFORMATION**

1. Name Of U.S. Health Insurance Carrier (See Instructions)

**SECTION C. IMMIGRATION STATUS INFORMATION**

1. Visa Classification Do you have an F or J visa classification? <input type="checkbox"/> Yes. Complete C 2 and C 3 and proceed to section D. Step 1. <input type="checkbox"/> No. Proceed to section D. Step 1.	2. Enter Original Date You Entered The U.S. (See Instructions)	3. Enter Expiration Date of Current Visa (See Instructions)
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**SECTION D. SUBSTANTIAL PRESENCE TEST**

The substantial presence test is used to determine whether a non-U.S. citizen should be classified for tax purposes as a resident alien or as a nonresident alien. The information below will assist you in determining your U.S. tax residency status.

<b>Step 1</b> Check the statement that describes your status and follow the instructions after the statement.  If neither statement fits your status, proceed to Step 2.	<input type="checkbox"/> I will be in the U.S. less than 31 days in the entire calendar year for which residency is being determined. You are a nonresident alien for tax purposes. Do not complete Step 2, proceed to section G.
	<input type="checkbox"/> I am a STUDENT on an F-1, J-1, M-1, or Q-1 visa, and including the calendar year in which this form is being prepared, throughout my lifetime I have been physically present in the U.S. as an F-1, J-1, M-1, or Q-1 visa holder (whether as a student, teacher, researcher, or trainee) for <u>five or fewer calendar years</u> . Physical presence in the U.S. in such visa status for any part of a calendar year constitutes a full calendar year of presence. List all years that you were present in the U.S. for all or any part of the calendar year in F-1, J-1, M-1, or Q-1 visa status whether as a student, teacher, researcher, or trainee status. Years present: _____  If you meet these conditions, you are a nonresident alien for tax purposes for the calendar year in which this form is completed. Do not complete Step 2, proceed to section G.
	<input type="checkbox"/> I am a TEACHER, RESEARCHER, or TRAINEE on a J-1 or Q-1 visa, and with respect to the six calendar years immediately prior to the calendar year in which this form is being prepared, I was physically present in the U.S. as an F-1, J-1, M-1, or Q-1 visa holder (whether as a student, teacher, researcher, or trainee) for <u>less than two of such six years</u> . Physical presence in the U.S. in such visa status for any part of a calendar year constitutes a full calendar year of presence. List all years that you were present in the U.S. for all or any part of the calendar year in F-1, J-1, M-1, or Q-1 visa status whether as a student, teacher, researcher, or trainee status. Years present: _____  If you meet these conditions, you are a nonresident alien for tax purposes for the calendar year in which this form is completed. Do not complete step 2, proceed to section G.
	<input type="checkbox"/> No statement applies. Proceed to Step 2.



<b>Step 2 Substantial Presence Test</b>	This step involves a calculation of the number of days that you have been physically present in the U.S. during the current year and the two immediately preceding years. It is important to note that some days of physical presence may not be counted for this test. Please review the Instructions before completing step 2.			
<b>YEAR</b>	<b>PERIOD (S) WHEN YOU WERE PHYSICALLY PRESENT IN THE U.S.</b>	<b>TOTAL COUNTABLE DAYS OF U.S. PRESENCE</b>	<b>CALCULATION FACTOR</b>	<b>DAYS TO COUNT</b>
Current Year: _____			X 1 =	
1st Preceding Year: _____			X 1/3 =	
2 <sup>nd</sup> Preceding Year: _____			X 1/6 =	
			<b>TOTAL</b>	

<b>SECTION E. SUMMARY OF FOREIGN STATUS FOR FEDERAL TAX WITHHOLDING</b>
<input type="checkbox"/> Check here if your total days in Step 2 are less than 183 days. You are a nonresident alien for Federal tax purposes for the current year. Proceed to Section G.
<input type="checkbox"/> Check here if your total days in Step 2 are equal to or greater than 183 days. You are a resident alien for Federal tax purposes for the current year. Proceed to Section F.
<b>SECTION F. CLOSER CONNECTION TEST</b>
Even though you meet the substantial presence test and are considered a resident alien for Federal tax purposes, you may be eligible to claim the closer connection exception. Please read the Instructions for information regarding the closer connection exception.
<input type="checkbox"/> Yes, I qualify for the closer connection exception and have attached an IRS determination letter. Proceed to Section G.
<input type="checkbox"/> No, I do not qualify for the closer connection exception. Proceed to Section G.
<b>SECTION G. CLAIM OF TAX TREATY BENEFITS</b> (Complete if applicable, otherwise proceed to section I.) (Please note that tax treaty benefits do not apply to California Personal Income Tax Withholding).
The payments that you receive from LBNL may be eligible for an exemption from Federal tax withholding under a tax treaty between the U.S. and your country of residence. If you are receiving a fellowship or royalty payment and are eligible to claim tax exemption, please complete the information below: Country of Residence _____ Treaty Article _____ If you are an employee and previously used the tax treaty exemption, list all years in which you used the tax treaty exemption. Years: _____
See Instructions for further information and any additional reporting requirements.
<b>SECTION H. WORKING OUTSIDE THE U.S. (See Instructions)</b>
I certify that I am not a U.S. citizen or permanent resident of the U.S., and all of my services for the University of California are performed in _____.
<b>SECTION I. CERTIFICATION</b>
Under penalties of perjury I certify I have read the Instructions for this form and that the information on this form, to the best of my knowledge and belief, is true, correct, and complete. I understand that if my immigration status changes from that which I have indicated on this form, I must submit a new Certificate of Foreign Status for Federal Tax Withholding (LBNL W-8BEN) form.
The Internal Revenue Service does not require your consent to any provisions of this document other than the certifications required to establish your status as a non-U.S. person and, if applicable, obtain a reduced rate of withholding.
Signature _____ Date _____



## Instructions for Completing the Certificate of Foreign Status for Federal Tax Withholding (LBNL Substitute W-8BEN)

You have been asked to complete the Certificate of Foreign Status for Federal Tax Withholding form because you are a non-U.S. citizen receiving payments from LBNL. Under Federal tax laws, all non-U.S. citizens are classified as either resident aliens or nonresident aliens. LBNL must establish your proper classification with respect to residency for Federal tax purposes in order to determine the proper tax withholding and file the appropriate reports with the Internal Revenue Service. By completing the information on the form, LBNL can determine whether you should be classified for Federal tax purposes as a resident alien or a nonresident alien. The Instructions below will assist you in completing this form. Please note that you must complete this form at the time of hire, rehire, or if there are any changes in your visa status.

### **SECTION A. IDENTIFICATION OF PAYEE**

1. **NAME** – Enter your full name – Last, First, Middle.
2. **EMPLOYEE ID. NUMBER** – LBNL employees enter your 9-digit University employee identification number. If you are a nonemployee, leave this field blank.
3. **TAXPAYER ID. NUMBER** – Check the box that applies to your taxpayer ID. Number: SSN (Social Security Number), ITIN (Individual Taxpayer Identification Number), or EIN (Employer Identification Number). (If you are a Canadian, do not enter the social security number issued by the Canadian government). An individual otherwise ineligible to obtain a SSN may obtain an ITIN. You may obtain an ITIN, if you are eligible, by filing Form W-7, Application for Individual Taxpayer Identification Number, along with necessary documentation with the IRS Service Center in Austin, TX. You may obtain the Form W-7 from the IRS web site, [www.irs.gov](http://www.irs.gov).
4. **DEPARTMENT** – Enter the name of your division compensating you or providing the fellowship grant to you.
5. **EMAIL ADDRESS** – Enter your email address.
6. **LBNL STATUS** – Check all that apply.
7. **STREET ADDRESS IN U.S.** – Enter your current mailing address. Utilize Employee Self-Service to change your address.
8. **PERMANENT RESIDENCE ADDRESS** – Enter your permanent address in the country where you claim to be a resident for purposes of that country's income tax. (Do not use a LBNL address, P.O. Box, or in-care of address). If your permanent address is the same as # 7, you may leave # 8 blank.

### **SECTION B. HEALTH INSURANCE INFORMATION**

1. **NAME OF U.S. HEALTH INSURANCE CARRIER** – Enter the name of your health insurance provider in the U.S.

### **SECTION C. IMMIGRATION INFORMATION**

1. **VISA Classification** – Check the box that applies to your classification. For F or J visa classifications, this information can be found on your Form I-20, DS-2019, Notice of Action, or I-94. (Please note that if your visa classification is H, O, or TN, you must be paid by the employer that filed and received approval of your petition).
2. **ORIGINAL DATE YOU ENTERED U.S.** – Enter the date on which you first entered the U.S. F and J visa holders please note that you may enter and leave the U.S. many times during the period of your study, teaching, or research in the U.S. (i.e., vacations, holidays, or summer breaks) but the original date of entry into the U.S. on your current visa is the first date that you arrived in the U.S. to begin your study, teaching, research, etc., not the last date that you entered the U.S.
3. **EXPIRATION DATE OF CURRENT VISA** – Enter the expiration date of your current visa (F visa holders this information can be found in Part 5 of the I-20 or the EAD card if on practical training. J visa holders this information can be found on the DS-2019 form in Box 3.). All other visa statuses check your Notice of Action, or I-94.

### **SECTION D. SUBSTANTIAL PRESENCE TEST**

- Step 1: Read the statements and check the box that corresponds to your status. Proceed to the step indicated by your choice.
- Step 2: Complete each row and column in this chart. In the first column, enter the applicable calendar year. In the second column, enter the periods when you were or expect to be physically present in the U.S. In the third column, enter only "countable" days of physical presence in the U.S. In this connection, you should not count:
- Days spent solely commuting to work in the U.S. from a residence in Canada or Mexico.
  - Days spent in the U.S. for less than 24 hours while in transit between two places, which are located outside the U.S.
  - Days you were unable to leave the U.S. because of a medical condition that developed while in the U.S.
  - Days in which you were exempt from having to count days as a student on an F-1, J-1, M-1, or Q-1 visa or as a teacher, researcher or trainee on a J-1 or Q-1 visa.

For each year, multiply the number of **TOTAL COUNTABLE DAYS OF U.S. PRESENCE** by the **CALCULATION FACTOR** indicated to arrive at the **DAYS TO COUNT** in the far right column. Add the number of days in the right hand column to calculate the Total.

### **SECTION E. SUMMARY OF FOREIGN STATUS FOR FEDERAL TAX WITHHOLDING**

Check the appropriate box based on the Total Days to Count reported in Step 2 above.

### **SECTION F. CLOSER CONNECTION TEST**

You may be eligible to claim the closer connection exception with the IRS if you can answer yes to the following three questions:

- Will you be in the U.S. for fewer than 183 days in the current year?
- Do you pay income taxes in your country of residency?
- Do you have a closer connection with the foreign country in which a tax home is maintained than to the U.S.?

These factors are used to determine if you meet the requisite closer connection requirements. You must file Form 8840 with the IRS to establish your claim that you are a nonresident alien. Additional information regarding the closer connection exception is set forth in the IRS Form 8840, Closer Connection Exception Statement for Aliens and Publication 519, U.S. Tax Guide for Aliens. You may obtain this form and publication from the IRS web site at the following address: [www.irs.gov](http://www.irs.gov). You must provide a copy of the IRS closer connection determination letter upon receipt to the Payroll Department.

### **SECTION G. CLAIM OF TAX TREATY BENEFITS**

You may be eligible for exemption from Federal income tax withholding under a tax treaty between the U.S. and your country of residence. If you wish to claim the benefits of a tax treaty you must: 1) be receiving a type of income (e.g., wages, fellowship award, royalty, etc.) that is exempt under a specific provision of the tax treaty; and 2) meet all treaty eligibility requirements. In addition to completing this form, nonresident aliens receiving a fellowship or royalty payment who want to claim the tax treaty exemption must complete the information requested in Section G to claim the exemption. Nonresident alien employees (including students, teachers, and researchers) claiming tax exemption for wages are required to submit to LBNL a Form 8233,



Exemption From Withholding on Compensation for Independent (and Certain Dependent) Personal Service of a Nonresident Alien Individual, and must provide an additional tax treaty statement (as required under Revenue Procedures 87-8, 87-9, 93-22, and 93A).

Nonresident alien independent contractors must also submit a Form 8233 to claim tax treaty benefits. Resident aliens who are claiming a tax treaty exemption of any kind must complete a Form W-9, Request for Taxpayer Identification Number and Certification.

Tax treaty forms may be available from your Payroll Department.

#### **SECTION H. WORKING OUTSIDE THE UNITED STATES**

Compensation paid to a nonresident alien for services performed entirely outside of the U.S. is considered to be foreign source income; therefore, no U.S. tax withholding is required. If the services are performed both within and without the U.S., the total amount of the compensation must be prorated based on the total time associated with the performance of service within and without the U.S. This exclusion is applicable to both employee wages and independent contractor compensation. If you meet the above criteria, you must complete the information requested in Section H to claim this exclusion. You may obtain additional information from the IRS web site at the following address: [www.irs.gov](http://www.irs.gov).

#### **SECTION I. CERTIFICATION**

Sign and date the form. Return the completed form to the office that issued it to you.

#### **ADDITIONAL INFORMATION**

**CALIFORNIA PERSONAL INCOME TAX** - Regardless of your Federal income tax status, you are subject to California Personal Income Tax in the same manner as U.S. citizens.

#### **CHANGE IN CIRCUMSTANCES**

If a change in circumstances makes the information on this form incorrect, you are required to immediately complete a new form. Failure to do so may result in incorrect Federal tax withholding and reporting. Please note that nonresident alien employees should complete the UC W-4NR/DE 4 to make a change in their withholding status. If a change in circumstances makes you a resident alien, you should complete the Form UC W-4/DE 4. If you become a U.S. citizen or a lawful permanent resident after submission of this form, notify your department.

#### **EXPIRATION OF FORM**

This form will remain in effect for a period of three years from the date that it is signed.

## ***Frequently Asked Questions***

### **1. What is the difference between a resident alien and a nonresident alien for tax purposes?**

The Internal Revenue Service (IRS) classifies all foreign nationals as either resident aliens or nonresident aliens. Resident aliens are, for the most part, taxed in the same manner as U.S. citizens. The Internal Revenue Code (IRC), however, imposes an entirely different tax system on nonresident aliens. There are many differences between the two tax regimes, but perhaps the most significant is that resident aliens, like U.S. citizens, are taxed on their worldwide income, while nonresident aliens are taxed only on their U.S.-sourced income. In addition, different income tax withholding and reporting requirements are imposed on payments made to nonresident aliens.

### **2. What are the "green card" and "substantial presence test"?**

These are the two tests that the IRS uses to classify a foreign national as either a resident alien or a nonresident alien.

Generally, if either test is met, the person is a resident alien.

Under the green card test, a foreign national is classified as a resident alien on the date that the person is officially granted green card status. Resident alien status remains in effect until such time as the green card is rescinded or abandoned.

The substantial presence test measures the extent of a foreign national's physical presence in the U.S. to determine whether the person has been present in the U.S. for a sufficient amount of time to be classified as a resident alien. The substantial presence test (which is used only for tax purposes, not for immigration classification purposes) is met if the foreign national is physically present in the U.S. for a total of at least 183 days, taking into account all days of physical presence in the current year and in the two immediately preceding years. In addition, the person must be physically present for at least 31 days during the calendar year being tested. In making the 183-day calculation, the individual must count:

- The total number of days of physical presence in the U.S. during the current year;
- 1/3 of the number of days of physical presence in the U.S. during the 1st year preceding the current calendar year; and
- 1/6 of the number of days of physical presence in the U.S. during the 2nd year preceding the current calendar year.

This calculation is set forth in Section D, Step 2 of the Certificate of Foreign Status for Federal Tax Withholding (UC W-8BEN) form. For a non-exempt foreign national, the substantial presence test must be applied each calendar year to determine whether the foreign national will be treated as a resident or a nonresident alien for the year. Thus, a person's classification may change from year to year.

### **3. Who is an "exempt individual" for tax purposes?**

The term "exempt individual" does not refer to exemption from U.S. income tax; rather, it describes certain foreign national students, teachers, researchers, or trainees who are exempt from having to count days of physical presence in the U.S. toward the substantial presence test. The result of being an exempt individual is that the period of time that the person is classified as a nonresident alien is extended. In order to qualify as an exempt individual, the person must be temporarily present in the U.S. and be in substantial compliance with the conditions of his or her visa. In addition, the individual must fit one of the following profiles:

- Present in the U.S. as a teacher/researcher/trainee or postdoctoral fellow on a J or Q visa, except that such person will not be an exempt individual for the current year if he or she had been an exempt individual for any part of two or more of the previous six calendar years. In making the two-out-of-six year determination, the person must take into account any part of the year in which he or she was (1) a teacher, researcher, trainee, or postdoctoral fellow under a J-1 or Q-1 visa, and (2) a student under an F-1, J-1, M-1, or Q-1 visa.
- Present in the U.S. as a student on an F-1, J-1, M-1, or Q-1 visa, except that such person will not be an exempt individual for the current year if he or she had been an exempt individual for any part of five calendar years throughout the person's lifetime. In making the five-year determination, the person must take into account any part of a calendar year that he or she was previously present in the U.S. as (1) a student under an F-1, J-1, M-1, or Q-1 visa, and (2) a teacher, researcher, trainee, postdoctoral fellow under a J-1 or Q-1 visa.



**4. What if I no longer qualify as an "exempt individual" and meet the substantial presence test — are there other ways I may be considered a nonresident alien for tax purposes?**

If a foreign national no longer qualifies as an exempt individual and meets the substantial presence test, he or she may still be classified as a nonresident alien under two exceptions set forth in the IRC.

- **CLOSER CONNECTION EXCEPTION.** If an individual meets the closer connection exception as described in the Instructions for Section F, the Form 8840 must be filed with the IRS so that the individual can establish his claim that he is a nonresident alien of the U.S. by reasons of the closer connection exception. The Form 8840 must be attached to Form 1040NR or Form 1040NR-EZ, if filing a tax return, or the Form can be mailed directly to the Internal Revenue Service Center, Philadelphia, PA 19255 by the due date for filing Form 1040NR or Form 1040NR-EZ.

- **STUDENTS PRESENT LONGER THAN 5 CALENDAR YEARS.** An individual may continue to extend his or her student exempt individual status beyond the 5-year lifetime maximum if he or she meets both of the following conditions:

1. The individual does not plan to reside permanently in the U.S. (In making this determination, the IRS looks at the same factors used to determine the "closer connection" exception described above, and whether the person has taken any affirmative steps to file for status as a lawful permanent resident).

2. The individual is in substantial compliance with the requirements of his or her current student visa.

**5. What is FICA?**

The Federal Insurance Contributions Act, (FICA) taxes are imposed on wages paid to employees. FICA taxes and benefits consist of two parts: Social Security or Old Age Survivors, and Disability Insurance (OASDI) and Hospital Insurance for senior citizens and the disabled (Medicare). The tax is imposed on both the employer and the employee. The employer is required to withhold the applicable FICA tax from the employee's wages and, in addition, contribute a like amount from its own funds. The FICA tax is imposed on U.S. citizens, resident aliens, and nonresident alien employees, but the IRC provides a FICA tax exemption for some student and nonresident alien employees (see below).

**Am I exempt from FICA tax withholding?**

A student employed by LBNL is exempt from FICA if he or she is:

- Enrolled at the University of California on at least a half-time basis, and not in a career employee position.

A nonresident alien employee is exempt from FICA tax if he or she is:

- Present in the U.S. under an F-1, J-1, M-1 or Q-1 visa, and

- Performing services in accordance with the primary purpose of the visa's issuance. In connection with these two FICA tax exemptions, please note that:

- An individual can qualify for both. Thus, a nonresident alien student who is later reclassified as a resident alien will no longer qualify for the FICA tax exemption under the nonresident alien FICA tax exemption, but may qualify under the student employee exemption.

- The spouse and dependents of the primary visa holder (i.e., F-2, J-2, or M-2, or Q-2 visa holders) are not eligible for the nonresident alien FICA tax exemption.

**6. Why do I need an SSN or ITIN?**

A resident or nonresident alien employed by the University must obtain a Social Security Number (SSN). Any individual not eligible to obtain an SSN must obtain an Individual Taxpayer Identification Number (ITIN) by filing a Form W-7, Application for IRS Individual Taxpayer Identification Number. The requirement to obtain an ITIN applies primarily to nonresident aliens who receive honoraria or other payments for independent contractor services or who are recipients of scholarship or fellowship grants. While Form W-7s are normally filed with the IRS, it may be possible for an individual to obtain an ITIN through the University. Persons interested in obtaining an ITIN through the University should contact their department for more information. An SSN or ITIN also is required on individual tax returns filed with the IRS and State tax authorities by foreign nationals, whether classified as resident aliens or nonresident aliens.

**7. What is an Income Tax Treaty?**

An income tax treaty is a bilateral agreement between two governments under which each country agrees to limit or modify the application of its domestic tax laws in an attempt to avoid double taxation. When the United States enters into a tax treaty agreement with a foreign country, **the treaty supersedes Federal tax laws** and provides tax benefits to aliens who are residents of the treaty country. Such aliens may be eligible for reduced tax rates or for exemption from Federal tax withholding, if they meet the requirements of the particular treaty. LBNL is a research institution for the purposes of claiming a tax treaty.

**8. How is my status for California State income tax purposes determined?**

California does not distinguish between U.S. citizens, residents, and nonresident aliens with respect to State income tax withholding. Wages paid to California residents for services performed both within and outside the State are subject to State income tax withholding. Wages paid to nonresidents of California for services performed inside the State are subject to withholding for State income tax; only wages paid to nonresidents of California for services performed outside the State are exempt from withholding. The LBNL Form UC W-4NR/DE 4 provides information for determining a nonresident employee's tax filing status and the number of allowances to claim for income tax withholding. All new employees must complete this form. Additional information regarding California residency status may be obtained in the Franchise Tax Board, [Publication 1031](#); Guidelines for Determining Resident Status. This publication is available at the Franchise Tax Board web site.

**9. How may I obtain more information about my Federal and State tax status?**

For more information on your Federal tax status, contact the IRS on the web at: [www.irs.gov](http://www.irs.gov) or call (800) 829-1040.

For more information on your State tax status, contact the Franchise Tax Board on the web at: [www.ftb.ca.gov](http://www.ftb.ca.gov) or call (800) 852-5711.